

1 MCGREGOR W. SCOTT  
United States Attorney  
2 MATTHEW C. STEGMAN  
Assistant U.S. Attorney  
3 501 I Street, Suite 10-100  
Sacramento, California 95814  
4 Telephone: (916) 554-2793

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6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA  
9

10 UNITED STATES OF AMERICA, ) CR. NO. S-04-408-DFL  
11 )  
Plaintiff, ) APPLICATION FOR ORDER  
12 ) REGARDING CRIMINAL FORFEITURE  
v. ) OF PROPERTY IN GOVERNMENT  
13 ) CUSTODY - 18 U.S.C. §  
DAVID NUNEZ MALDONADO, ) 983(a)(3)(B)(ii)(II)  
14 GUADALUPE MARIA LUNA, )  
JOSE DE JESUS BUENROSTRO, and )  
15 FERNANDO TREJO DAMIAN, )  
Defendants. )  
16 )  
17 )

18 The United States of America, through its counsel, hereby  
19 moves for an order allowing the government to maintain custody of  
20 property already in the government's possession pending the  
21 resolution of a criminal forfeiture matter. The grounds for the  
22 motion are as follows:

23 On or about October 26, 2004, during the execution of federal  
24 search warrants, inspectors of the United States Postal Inspection  
25 Service ("USPIS") seized the following assets for the purpose of  
26 initiating civil forfeiture proceedings:

27 a). Approximately \$7,139.00 in U.S. Currency seized on  
or about October 26, 2004;

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1        b). Approximately \$2,405.00 in U.S. Currency seized on or  
2                about October 26, 2004;

3        On or about October 27, 2004, Magistrate Judge Nowinski issued  
4        civil seizure warrants pursuant to 18 U.S.C. § 981(b) based on  
5        probable cause for the following funds in the various bank  
6        accounts. On that same day, USPIS inspectors seized the following  
7        assets for the purpose of initiating civil forfeiture proceedings:

8        c). Approximately \$8,986.20 in U.S. Currency seized on or  
9                about October 27, 2004, from Umpqua Bank, account number  
              990050544, held in the name of David Nunez;

10       d). Approximately \$16,889.93 in U.S. Currency seized on or  
11                about October 27, 2004, from Wells Fargo Bank, account  
              number 0039971692, held in the name of David Nunez;

12       e). Approximately \$4,991.25 in U.S. Currency seized on or  
13                about October 27, 2004, from Redwood Credit Union,  
              account number 11000000212028, held in the name of David  
              Nunez;

14       f). Approximately \$8,616.50 in U.S. Currency seized on or  
15                about October 27, 2004, from Savings Bank of Mendocino  
              County, account number 02080911, held in the name of  
              David Nunez; and

16       g). Approximately \$14,476.30 in U.S. Currency seized on or  
17                about October 27, 2004, from Bank of America, account  
18                number 01282-06808, held in the name of David Nunez.

19       Hereinafter, the above-referenced assets (a-g) are  
20       collectively referred to as the "seized assets".

21       In accordance with 18 U.S.C. § 983(a)(1), the USPIS sent  
22       notice to defendant David Nunez Maldonado of its intent to forfeit  
23       the seized assets in a non-judicial forfeiture proceeding, and  
24       caused that notice to be published in a newspaper of general  
25       circulation.

26       On or about January 26, 2005, defendant David Nunez Maldonado  
27       filed a claim contesting the administrative forfeiture of the  
28       seized assets pursuant to 18 U.S.C. § 983(a)(2).

1 Pursuant to 18 U.S.C. § 983(a)(3), the United States has 90  
2 days in which to 1) return the property to the defendant, 2)  
3 commence a civil judicial forfeiture action, or 3) commence a  
4 criminal forfeiture action by including the seized assets in a  
5 criminal indictment. On April 21, 2005, the Government elected the  
6 third option when it filed a Superseding Indictment containing a  
7 forfeiture allegation concerning the seized assets. That  
8 Superseding Indictment is now pending in this Court.

9 Title 18 U.S.C. § 983(a)(3)(B)(ii)(II) provides that when the  
10 government elects the third option, it must "take the steps  
11 necessary to preserve its right to maintain custody of the property  
12 as provided in the applicable criminal forfeiture statute". The  
13 applicable forfeiture statute in this case is 18 U.S.C. § 982.  
14 Title 18 U.S.C. § 982(b)(1) incorporates the forfeiture procedures  
15 set forth in 21 U.S.C. § 853. That statute prescribes several  
16 methods for preserving property for the purpose of criminal  
17 forfeiture.

18 Section 853(f) authorizes the issuance of a criminal seizure  
19 warrant. However, in cases like this one, where the property in  
20 question is already in Government custody, it is not appropriate  
21 for a court to issue a seizure warrant directing the Government to  
22 seize property from itself. In turn, Section 853(e) authorizes the  
23 court to issue a restraining order or an injunction to preserve the  
24 property for forfeiture. However, that provision is not pertinent  
25 because there is no need to enjoin the government from disposing of  
26 property that the government has taken into its custody for the  
27 purpose of forfeiture, and that the Government intends to preserve

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1 for that purpose through the conclusion of the pending criminal  
2 case.

3 Finally, Section 853(e)(1) also authorizes a court to "take  
4 any other action to preserve the availability of property" subject  
5 to forfeiture. The government contends that this provision applies  
6 in circumstances where, as here, the government has already  
7 obtained lawful custody of the seized assets pursuant to federal  
8 seizure and search warrants, and the government seeks to comply  
9 with Section 983(a)(3)(B)(ii)(II). Thus, all that is required to  
10 comply with Section 983(a)(3)(B)(ii)(II) is an order from this  
11 Court stating that the United States and its agencies, including  
12 USPIIS and/or the United States Marshals Service, may continue to  
13 maintain custody of the seized assets until the criminal case is  
14 concluded.

15 Accordingly, pursuant to Section 853(e)(1), the United States  
16 respectfully moves this court to issue an order directing that the  
17 United States may maintain custody of the seized assets through the  
18 conclusion of the pending criminal case, and stating that such  
19 order satisfies the requirements of 18 U.S.C.

20 § 983(a)(3)(B)(ii)(II).

21 DATED: May 26, 2005

McGREGOR W. SCOTT  
United States Attorney

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24 By: /s/  
MATTHEW C. STEGMAN  
Assistant U.S. Attorney

**ORDER**

This matter comes before the Court on the motion of the United States for an Order authorizing the government and its agencies to maintain custody of certain property pending the conclusion of the pending criminal case. For the reasons provided in the government's motion, the Court makes the following orders:

IT IS HEREBY ORDERED, that the United States and its agencies, including the USPIS and/or the U.S. Marshals Service, are authorized to maintain and preserve the following assets until the conclusion of the instant criminal case, or pending further Order of this Court:

- a). Approximately \$7,139.00 in U.S. Currency seized on or about October 26, 2004;
- b). Approximately \$2,405.00 in U.S. Currency seized on or about October 26, 2004;
- c). Approximately \$8,986.20 in U.S. Currency seized on or about October 27, 2004, from Umpqua Bank, account number 990050544, held in the name of David Nunez;
- d). Approximately \$16,889.93 in U.S. Currency seized on or about October 27, 2004, from Wells Fargo Bank, account number 0039971692, held in the name of David Nunez;
- e). Approximately \$4,991.25 in U.S. Currency seized on or about October 27, 2004, from Redwood Credit Union, account number 11000000212028, held in the name of David Nunez;
- f). Approximately \$8,616.50 in U.S. Currency seized on or about October 27, 2004, from Savings Bank of Mendocino County, account number 02080911, held in the name of David Nunez; and
- g). Approximately \$14,476.30 in U.S. Currency seized on or about October 27, 2004, from Bank of America, account number 01282-06808, held in the name of David Nunez.

IT IS SO ORDERED.

DATED: 6/9/2005

/s/ David F. Levi  
DAVID F. LEVI  
UNITED STATES DISTRICT JUDGE